SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

ORIGINAL.

RIVERDALE COTTON MILLS

v.

ALABAMA AND GEORGIA MANUFACTURING CO. ET AL.

BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR CERTIORARI.

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Supreme Court of the United States.

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STATEMENT OF FACTS.

This is a petition by the Riverdale Cotton Mills, a corporation organized under the laws of Georgia, for a writ of *certiorari* to review a decree of the Circuit Court of Appeals for the Fifth Circuit dismissing for want of jurisdiction a bill filed by the petitioner against the respondents in the Circuit Court for the Northern District of Georgia. The following are briefly the material facts as shown by the petition and record.

The Alabama and Georgia Manufacturing Co. (hereinafter for convenience called the Manufacturing Co.) was chartered by special act of the State of Alabama on February 7, 1866 (Record, p. 618). On March 12, 1866, the same individuals, as incorporators, were chartered under the same name and for the same purposes by the State of Georgia (Record, p. 653). This corporation acquired and

for many years operated a manufacturing plant partly in Alabama and partly in Georgia.

By deed of trust dated January 2, 1884, this corporation mortgaged all its property to three trustees to secure an issue of bonds (Record, p. 607). Subsequently all the title of the Manufacturing Co. to the equity of redemption became vested, apparently by sale under a decree of a state court in Georgia, in the Huguley Manufacturing Co. (hereinafter for convenience called the Huguley Co.).

Default was made in the payment of the interest on the mortgage bonds, and on January 20, 1891, one of the three trustees filed a bill of complaint in the Circuit Court for the Northern District of Georgia against the Manufacturing Co. and the Huguley Co. both described as corporations organized under the laws of Georgia, and another of the trustees who was interested in the Huguley Co. and adversely to the bondholders. The third trustee was then dead. This bill sought a foreclosure of the mortgage. The defendant corporations duly appeared and filed an answer admitting the facts alleged as to their incorporation and citizenship. A decree of foreclosure was entered, a sale was ordered and made, the property was purchased in behalf of the bondholders and conveyed to the Galeton Cotton Mills.

The Manufacturing Co. and the Huguley Co. appealed from this decree to the Circuit Court of Appeals, and the decree was reversed. A second sale of the property was ordered, and an account of the rents and profits during the occupation under the first sale. A second appeal was taken by these respondents and the decree affirmed. A second sale of the property was had and it was pur-

chased in behalf of the bondholders. On October 15, 1898, a decree for a conveyance under this sale was entered, the property was conveyed to the petitioner, and all the purchase money was paid into court. From the last mentioned decree these respondents again appealed to Circuit Court of Appeals: that court affirmed the decree; the respondents then appealed to this Court and also filed a petition for *certiorari*. This petition was denied on October 30, 1901, and the appeal was dismissed on February 24, 1902.

While the petition for *certiorari* and the appeal to this Court above referred to were still pending, the respondents, on May 2, 1901, filed a bill in the Chancery Court of Alabama against the present petitioner and others, alleging in substance that the Manufacturing Co. plaintiff in that suit and the Huguley Co. plaintiff in that suit was each a corporation organized under the laws of Alabama; that the corporations thus purporting to bring that suit were not parties to the original foreclosure suit, and that the proceedings in the original foreclosure suit were invalid because all of the mortgaged property was situated in Alabama. The bill sought to establish a right to redeem the mortgaged property and an account of rents and profits (Record, p. 610).

This petitioner and the other defendants in the suit brought in Alabama filed an answer, demurrer, pleas, and motion to dismiss, setting up the validity of the proceedings in the foreclosure suit (Record, p. 634), and on June 10, 1901, this petitioner filed in the Circuit Court for the Northern District of Georgia an ancillary bill against the Manufacturing Co. and Huguley Co. alleging that each was

a corporation organized under the laws of Georgia, or if either was organized under the laws of Alabama, that it had been joined as a defendant in the original foreclosure suit and had admitted itself to be organized under the laws of Georgia, and that all the business of each had always been carried on in Georgia. The bill, which also named as defendants the solicitors who had represented the respondents in the foreclosure suit, and were representing them in the Alabama suit, sought an injunction against the further prosecution of the suit in Alabama (Record, p. 597).

On this ancillary bill an order of notice to show cause why a preliminary injunction should not be granted was issued. All the respondents named in the bill filed an "Answer to Bill and Response to Rule to Show Cause," without entering any special appearance or otherwise limiting their appearance, in which they set up substantially the same facts relied on in the Alabama suit, and asked that the bill be dismissed for want of jurisdiction of the persons of the defendants and of the subject-matter (Record, p. 629).

The Circuit Court for the Northern District of Georgia granted a preliminary injunction as prayed for in the bill. The respondents asked leave to file a petition in this Court for a writ of prohibition. Leave was denied and at the same time the appeal to this Court in the original foreclosure suit was dismissed. The ancillary bill was then heard upon the bill and proceedings ancillary to the proceedings in the foreclosure suit, and upon the record in the latter suit, and a final decree was entered, granting a permanent injunction (Record, p. 665).

From this final decree an appeal was taken by the

respondents to the Circuit Court of Appeals assigning as errors in various forms: want of jurisdiction of the subject-matter because the bill was not ancillary and did not purport to be between citizens of different States, want of jurisdiction of the persons of the respondents, violation of Section 720 of the Revised Statutes by enjoining a suit in a state court, want of evidence to support the decree, want of equity, want of jurisdiction of the Circuit Court in the original foreclosure suit to make any decree as to property in Alabama, failure of the decree in the original foreclosure suit to bind the respondent corporations as corporations of Alabama (Record, p. 669).

The Circuit Court of Appeals, Judge Pardee dissenting, ordered the bill to be dismissed for want of jurisdiction on the ground that the Alabama and Georgia Manufacturing Co. and the Huguley Manufacturing Co. organized under the laws of Alabama was each a separate corporation from the corporation of the same name described as organized under the laws of Georgia, and not bound by the decrees in the suit to which the corporations of the same names described as organized under the laws of Georgia were parties.

The proceedings in this litigation up to the present time, so far as reported, are as follows:

Robinson v. *Alabama & G. Mfg. Co.*, 48 Fed. Rep. 12 (1891). Demurrer to original foreclosure bill overruled. Lamar and Newman, JJ.

Ibid., 51 Fed. Rep. 268 (1892). Demurrer to application for allowance of counsel fees sustained. Newman, J.

Alabama & G. Mfg. Co. v. *Robinson*, 56 Fed. Rep. 690 (1893). First decree for foreclosure and sale reversed. Pardee, McCormick, and Toulmin, JJ.

Robinson v. *Alabama & G. Mfg. Co.*, 67 Fed. Rep. 189 (1894). Decree for restitution and for a second foreclosure. Newman, J.

Alabama & G. Mfg. Co. v. *Robinson*, 72 Fed Rep. 708 (1896). Decree as to restitution and for second foreclosure affirmed. Pardee, McCormick, and Boarman, JJ.

Robinson v. *Alabama & G. Mfg. Co.*, 89 Fed. Rep. 218 (1898). Decree on account for rents and profits and application thereof to deficiency in proceeds of mortgage. Newman, J.

Huguley Mfg. Co. v. *Galeton Cotton Mills*, 94 Fed. Rep. 269 (1899). Decree as to rents and profits, etc. affirmed. Pardee, McCormick, and Shelby, JJ.

Ibid., 175 U. S. 726 (1899). Petition for writ of *certiorari* denied.

Riverdale Cotton Mills v. *Alabama & G. Mfg. Co.*, 111 Fed. Rep. 431 (1901). Preliminary injunction restraining prosecution of suit in Alabama granted. Newman, J.

Huguley Mfg. Co. v. *Galeton Cotton Mills*, 184 U. S. 290 (1902). Appeal from final decree dismissed.

In re The Huguley Mfg. Co., 184 U. S. 297 (1902). Leave to file petition for prohibition against taking jurisdiction of ancillary bill denied.

The petitioner submits that the Circuit Court of Appeals erred in ordering that the bill be dismissed for want of jurisdiction in the Circuit Court, because:

(1) The Alabama and Georgia Manufacturing Co., if organized under the laws both of Alabama and Georgia, was bound as to its organization in both States by the decree entered in the Circuit Court for the Northern District of Georgia against it as a corporation of Georgia.

(2) The Huguley Manufacturing Co., if organized under the laws of Alabama alone or of both Georgia and

Alabama, was bound as a corporation of Alabama by the decree entered in the Circuit Court for the Northern District of Georgia against it as a corporation of Georgia.

(3) The Circuit Court for the Northern District of Georgia had jurisdiction to and did effectually foreclose the mortgage to Robinson and others by its decree in a suit to which all persons interested in the equity of redemption were parties, by which decree those persons were bound.

(4) The bill filed by the petitioner in the Circuit Court for the Northern District of Georgia was an ancillary bill and within the jurisdiction of that Court.

(5) The provision of Section 720 of the Revised Statutes was not applicable because the bill was ancillary.

(6) The Circuit Court for the Northern District of Georgia had jurisdiction of the persons of the respondents as well as of the subject-matter of the suit.

ARGUMENT

I.

If a corporation organized under the laws of two States is sued as a corporation of one of those States the judgment or decree is binding upon it as a corporation of the other State.

1. A corporation organized under the laws of two States is a single corporation as to its acts, obligations, and liabilities.

A corporation created by charters from two separate States, each constituting the same individuals a corporation under the same name and with same powers, has, for purposes of transacting business, only one existence. For

special purposes it may be important to distinguish between the entity created by the laws of one State and that created by the laws of the other. For all purposes of corporate action and liability the distinction does not exist.

In *Graham* v. *Boston, Hartford & Erie R. R. Co.*, 118 U. S. 161, this Court held that a corporation organized under the laws of Massachusetts, Rhode Island, Connecticut, and New York was so far a single corporation that a meeting of stockholders held in any one of those States pursuant to its laws was a valid meeting and could authorize a mortgage of the property in all the States.

Mr. Justice Blatchford, delivering the opinion of the Court, said:

> "The Boston, Hartford and Erie Company, therefore, though made up of distinct corporations, chartered by the legislatures of different States, had a capital stock which was a unit, and only one set of shareholders, who had an interest, by virtue of their ownership of shares of such stock, in all of its property everywhere. In its organization and action, and the practical management of its property, it was one corporation, having one board of directors, though, in its relations to any State, it was a separate corporation, governed by the laws of that State as to its property therein. It, therefore, had a domicil in each State, and the corporators or shareholders could, in the absence of any statutory provision to the contrary, hold meetings and transact corporate business in any one State, so as to bind the corporation in respect to to its property everywhere. *Bridge Co.* v. *Mayer*, 31 Ohio St. 317; Pierce on Railroads, 20." 118 U. S. 169, 170.

In like manner this Court held as to the same corporation that an act done in Rhode Island, authorized by the Rhode Island charter, was not an unlawful disposition of the corporate funds merely because the Connecticut charter granted no authority.

Clark v. *Barnard*, 108 U. S. 436.

For the same reason it was held by the Circuit Court for the District of Connecticut that for purposes of bankruptcy such a corporation was but a single body, and that an adjudication on a petition in bankruptcy against the Boston, Hartford & Erie R. R. Co. filed in Massachusetts, having priority in time over the adjudication on a petition filed in Connecticut, the latter petition should be dismissed.

In re Boston, Hartford & Erie R. R. Co., 9 Blatch. 101.

The acts and neglects of such a corporation are the acts and neglects of the composite body, binding upon it and enforceable in any jurisdiction in which it may be found, whether there recognized as a corporation of the one State or of the other.

Horne v. *Boston & Maine R. R. Co.*, 18 Fed. Rep. 50.

Fitzgerald v. *Missouri Pacific Ry. Co.*, 45 Fed. Rep. 812, 816.

If such a corporation is sued in one of the States by which it is created, a judgment or decree rendered against it is necessarily binding upon it as a whole. Any other result would lead to indescribable confusion, of which indeed the present case is an instance.

If the corporation for the enforcement of its liabilities were regarded as severable, then an obligation binding upon both the fictitious entities could be enforced only by bringing separate suits in separate jurisdictions, and these suits might result in as many separate and inconsistent verdicts and judgments.

The Courts have recognized these difficulties and have uniformly said that while the distinction between the corporate entities must for some purposes be observed, it was a fiction not applicable to the question of the binding force of the corporate obligations.

In *Uphoff* v. *C. St. L. & N. O. R. R. Co.*, 5 Fed. Rep. 545, the Court clearly intimated that a judgment against a so-called "interstate" corporation was binding upon it as a whole.

In *Horne* v. *B. & M. R. R. Co.*, 18 Fed. Rep. 50, 52, Judge Lowell said:

> "I will only add that the fiction which makes two or three corporations out of what is, in fact, one is established only for the purpose of giving each State its legitimate control over the charters which it grants, and that the acts and neglects of the corporation are done by it as a whole. It is immaterial in considering the question of jurisdiction, that the damage complained of was suffered within the limits of Massachusetts, and that the judgment will bind the corporation in that State."

In *Nashua & L. R. R. Co.* v. *Boston & L. R. R. Co.*, 19 Fed. Rep. 804, the Court said that in the case of such a consolidated corporation each of the entities, when properly sued, represented all.

In *Burger* v. *Grand Rapids & I. R. R. Co.*, 22 Fed. Rep. 561, 564, the Court said that a judgment against the corporation described as organized under the laws of one of the States creating it would be binding and enforceable against it as a corporation of the other.

Where a corporation was organized in both New York and Pennsylvania, it was held that a judgment recovered against it in the former State as a corporation of that State could be sued upon in the latter in an action against it as a corporation of the latter and could not be collaterally impeached.

Union Trust Co. v. *Rochester & P. R. R. Co.*, 29 Fed. Rep. 609.

This Court has never actually passed upon the question now under discussion, but the principle was involved in *Nashua & L. R. R. Co.* v. *Boston & L. R. R. Co.*, 136 U. S. 356. In that case the plaintiff corporation was organized in New Hampshire. Later an identical corporation was created in Massachusetts; and still later a statute was passed in Massachusetts apparently intended to effect complete consolidation, and two months after an act was passed in New Hampshire authorizing such a union. The corporation brought suit in the Circuit Court in Massachusetts describing itself as a corporation organized under the laws of New Hampshire for an accounting under a contract between the consolidated or "interstate" corporation and the defendant. Objection was taken to the jurisdiction on the ground that the corporation was also organized in Massachusetts, and to the merits on the ground among others that, if the suit was maintainable, the Massachusetts corporation was a necessary party (136 U. S. 362).

This Court held that the Circuit Court had jurisdiction, and also decided for the plaintiff on the merits, thus repudiating the argument that for purposes of enforcing the obligation or obtaining a final and binding adjudication there was a second corporate entity that must be made a party.

2. The cases as to the jurisdiction of the Federal Courts depend upon a wholly distinct question from that here under consideration.

Much reliance has been put by the respondents, and apparently by the judges of the Circuit Court of Appeals, on the decisions of this Court relating to federal jurisdiction of suits by or against so-called interstate corporations. Those cases have no bearing on the present question.

This Court early recognized that a corporation might exist equally under the laws of each of several States, although for purposes of actually transacting business there was only one body.

Distinguishing between cases where there has been an actual incorporation in more than one State, and cases in which a corporation of one State has been granted authority to operate in another, even though coupled with a statutory declaration that by so doing it became a domestic corporation of the State granting such authority, this Court has held that in the latter class of cases the corporation was everywhere and for all purposes a corporation of the State granting the original charter.

Martin's Adm. v. *B. & O. R. R. Co.*, 151 U. S. 673.

St. J. & Gr. I. R. R. Co. v. *Steele*, 167 U. S. 659.

St. L. & St. F. R. R. Co. v. *James*, 161 U. S. 545.
L. N. O. & C. R. R. Co. v. *Louisville Tr. Co.*, 174 U. S. 552.
Southern Ry. Co. v. *Allison*, 190 U. S. 326.

And that in the former class of cases, where there were really two incorporations, the corporation was for jurisdictional purposes to be deemed a corporation of that one of the chartering States in which it was sued.

Railway Co. v. *Whitton*, 13 Wall. 270.
Memphis & C. R. R. Co. v. *Alabama*, 107 U. S. 581.
See also *Goodlett* v. *Louisville & N. R. R. Co.*, 122 U. S. 391.

A corporation created by the laws of a State is deemed a citizen of that State for purposes of jurisdiction by a legal fiction according to which all its stockholders are conclusively presumed to be citizens of that State. If the same persons have been created a corporation by the laws of two States, and two entities are to be recognized at the same time, this fiction would involve conclusively presuming that the same persons were citizens of each of two States. Some rule is necessary to avoid this anomaly. The requirement is met by recognizing, for purposes of jurisdiction, two separate entities, but refusing to recognize more than one of the two in any one proceeding. To secure a proper distribution of jurisdiction [illegible]een the States which have created the corporation [illegible] proper control by each State over the charter it has granted, in a proceeding against the corporation in either State, only the entity created by that State is recognized.

See *Horne* v. *B. & M. R. R. Co.*, 18 Fed. Rep. 50.
Goodwin v. *N. Y. N. H. & H. R. R. Co.*, 124 Fed. Rep. 358.

If the fiction of distinct entities be carried beyond the determination of questions of federal jurisdiction, then it is difficult to see how an "interstate" corporation can ever be bound by the judgment or decree in any one suit. To accomplish that result, it would have to be sued in its several capacities in one proceeding in one State. Service could only be made by serving the officers in that State who were in fact officers of the corporation created by that State. If such service is conclusively deemed service upon the several corporate entities, and if all can be joined in a suit in one State, there remains nothing of the theory of separate entities except the description of the corporation in the process, not even a limitation of federal jurisdiction, for this Court has held that the incorporation elsewhere does not limit that jurisdiction. If the suit cannot be so maintained, then all the entities can be bound only by bringing a separate suit against each.

II.

When a final decree or judgment has been rendered in a Circuit Court of the United States against a corporation there described as organized under the laws of a given State, and the corporation has admitted the truth of that allegation, the judgment or decree cannot be collaterally impeached on the ground that the allegation of citizenship was untrue.

The courts of the United States are of limited jurisdiction, but they are not inferior courts, and where a final judgment or decree has actually been entered, all presumptions are to be made in favor of jurisdiction. If the jurisdiction is not shown upon the record, but a final decree or judgment is none the less rendered, that decree or judgment may be reversed on error or appeal, but cannot be collaterally attacked.

M'Cormick v. *Sullivant*, 10 Wheat. 192.
Ex parte Tobias Watkins, 3 Peters, 193, 207.
Cutler v. *Huston*, 158 U. S. 423.

In like manner, if a suit is removed to the Circuit Court the final judgment or decree, if unreversed, is valid and binding, although the facts justifying removal are not alleged in the record, and even though it is made to appear affirmatively that there was not a right to remove.

Des Moines N. & R. R. Co. v. *Iowa Homestead Co.*, 123 U. S. 552.
Dowell v. *Applegate*, 152 U. S. 327.
Evers v. *Watson*, 156 U. S. 527.

In *Des Moines N. & R. R. Co.* v. *Iowa Homestead Co.* a bill in equity was brought in a state court in Iowa to recover certain taxes. The defendant relied upon a final decree in a suit between the same parties and others brought in a state court and removed by the defendants therein to the Circuit Court. The plaintiff contended that this decree was invalid because it appeared that some of the defendants, including the present defendant, were citizens of the same State as the plaintiff there and here.

This Court, on writ of error to the Supreme Court of Iowa, held that the former decree was valid. This Court said:

> "It is said, however, that these decisions apply only to cases where the record simply fails to show jurisdiction. Here it is claimed that the record shows there could be no jurisdiction, because it appears affirmatively that the Navigation and Railroad Company, one of the defendants, was a citizen of the same State with the plaintiff. But the record shows, with equal distinctness, that all the parties were actually before the court, and made no objection to its jurisdiction. . . . Whether in such a case the suit could be removed was a question for the Circuit Court to decide when it was called on to take jurisdiction. If it kept the case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity." 123 U. S. 558, 559.

Where the record on its face shows jurisdiction in the Circuit Court, and all the parties to the suit have acquiesced in the allegations showing jurisdiction, and in the assumption of jurisdiction by the Court, the case is much stronger. To allow a defendant under such circumstances to controvert collaterally the existence of the facts is not only to permit him to attack collaterally the judgment or decree, but to permit him to do this after he has expressly admitted the existence of the necessary facts and thus led the Court to assume and exercise the jurisdiction which he now seeks to deny.

This Court has held that where the record states facts necessary to give jurisdiction which are not denied, the final decree cannot be attacked collaterally, though it is alleged that the statement of those facts was false and made only for the purpose of bringing the suit in the Circuit Court.

Lacassagne v. *Chapuis*, 144 U. S. 119.

In this case a suit had been brought by one alleging herself to be an alien to establish a right to land against a citizen of Louisiana, and the plaintiff obtained a decree. Subsequently a suit was there brought against the executor of the former plaintiff by persons not parties to the former suit, claiming as mortgagees of the former defendant to recover the property on the ground, among others, that the decree in the first suit was void because the plaintiff therein was in fact a citizen of Louisiana so that the Circuit Court had no jurisdiction.

This Court said:

> "As to the allegation in the bill that the court was without jurisdiction of the suit brought by the widow Cavé, because she alleged falsely therein that she was a citizen of France, when in fact she was a citizen of Louisiana, and thus the court had no jurisdiction of the suit as between her and Marceline Cavailhez, that question cannot be raised and adjudicated in this suit. By the record of the former suit, there appeared to be jurisdiction, and the plaintiff cannot question it by means of this suit, when the question is not raised by Marceline Cavailhez, who was the defendant in the former suit." 144 U. S. 126.

In the original proceedings giving rise to the case to review which the present petition is brought, the Huguley Manufacturing Co. was sued under the description of a corporation organized under the laws of Georgia, and appeared and admitted the allegation. If the corporation in fact existed under the laws of Alabama, there was a misdescription in the nature of a misnomer, but the identity of the corporation appears on the record, and that corporation cannot now consistently with the principles laid down in the authorities cited assert that all the proceedings were void as to it, when by its own admission the Court was led to take jurisdiction. It is clear from the decisions that no principle of law renders the final decree of the Circuit Court for the Northern District of Georgia in the original foreclosure suit a nullity for want of jurisdiction. It is equally clear that the respondent has by its acts estopped itself from asserting facts impeaching the jurisdiction, since it has deliberately admitted a fact, peculiarly in its own knowledge, the truth of which establishes the existence of that jurisdiction.

If an estoppel can ever be created, it must arise against one who for ten years has allowed a litigation to continue, involving three appeals to the Circuit Court of Appeals and an appeal to this Court, and at the end of that litigation seeks to avoid the result by denying an allegation admitted at the outset and never questioned throughout the proceedings.

III.

A Circuit Court of the United States may foreclose a mortgage which covers land partly in one State and partly in another if it has personal jurisdiction over the mortgagor and all persons interested.

This Court decided in *Muller* v. *Dows*, 94 U. S. 444, that a Circuit Court of the United States sitting in one State might decree a foreclosure of a mortgage covering property partly in that State and partly in an adjoining State, if it had all the interested parties before it. The decision was put upon the obvious necessity for some means of foreclosing such mortgages, and upon the control of the court over the property, though part of it was without its territorial jurisdiction, by reason of the presence before the court of all persons interested and its power to compel such acts to be done by them as might be required to effectuate the result.

The jurisdiction thus established has since been freely exercised by the Circuit Courts.

Boston Safe Deposit & Trust Co. v. *Bankers & M. Tel. Co.*, 36 Fed. Rep. 288.

Ford v. *Delta & Pine Land Co.*, 43 Fed. Rep. 181.

Woodbury v. *Allegheny & K. R. R. Co.*, 72 Fed. Rep. 371.

International B. & T. Co. v. *Holland Tr. Co.*, 81 Fed. Rep. 422.

In *Central Trust Co.* v. *Wabash, St. L. & P. Ry. Co.*, 29 Fed. Rep. 618, Mr. Justice Brewer, speaking of the foreclosure of a mortgage covering the entire Wabash Railroad system which extended into several States, said:

"Of the propriety of a foreclosure in one Court operating upon the entire property running through several States, and of the validity of a sale made in pursuance of that foreclosure, and the completeness of the title which will pass by such sale, there can be now no longer a question. In the case of *Muller* v. *Dows*, 94 U. S. 444, that question was put at rest." p. 620.

In *Farmers L. & T. Co.* v. *Chicago & Atlantic Ry. Co.*, 27 Fed. Rep. 146, 148, Judge Gresham assumed that a decree might be entered in one circuit foreclosing as an entirety a mortgage covering a railroad extending into several States.

It has sometimes apparently been erroneously supposed that the decision of this Court in *Muller* v. *Dows* depended wholly upon the decree requiring a deed to be executed by the mortgagor or the trustee or both. By the decree appealed from in that case:

> "The court decreed a sale of the entire property covered by the mortgage, and directed the master, who was ordered to make the sale, to execute a good and sufficient deed or deeds to the purchaser. It also declared that after the sale both the defendant corporations and the complainants' trustees named in the mortgage, as well as all persons claiming under them or either of them, be barred and foreclosed from all interest, estate, right, claim, or equity of redemption of, in, and to the property, reserving, however, the rights of the holders of the bonds and coupons secured by the first mortgage, then remaining outstanding and unpaid. It directed that the two defendant corporations should surrender to the purchaser the property sold and conveyed, upon the execution,

approval, and delivery of the master's deed; and that, as further assurance, the Chicago and South-western Railway Co. should, on the approval and delivery of the master's deed, convey all the property therein described to the purchaser, by their good and sufficient deed." 94 U. S. 448.

Comparing the case and this decree with a Pennsylvania case cited in support, this Court said:

> "The mortgagors here were within the jurisdiction of the court. So were the trustees of the mortgage. It was at the instance of the latter the master was ordered to make the sale. The court might have ordered the trustees to make it. The mortgagors who were foreclosed were enjoined against claiming property after the master's sale, and directed to make a deed to the purchaser in further assurance. And the court can direct the trustees to make a deed to the purchaser in confirmation of the sale. We cannot, therefore, declare void the decree which was made." 94 U. S. 450.

The Court did not, as will be noticed, rely upon the execution of any deed by the trustee, for none had been executed; and it dealt with the deed from the mortgagor as "in further assurance."

There is no force in the suggestion that a decree ordering a sale and conveyance by a master in a suit in which the only persons in whom title could be vested were before the Court fails of effect because it does not require those persons actually to execute a deed. It would obviously be within the power of the Court to appoint a master to execute such a deed in behalf of either of these parties to the suit, if either should be required to do so and should

refuse. Such a course was followed in the suit out of which grew the case of *Root* v. *Woolworth*, 150 U. S. 401 (see statements of facts in that case, 150 U. S. at p. 402).

A master appointed to make a sale where the Court has all the parties before it may certainly be given by the Court all the powers that the Court could require the parties before it to confer on the master to enable him to execute the decree. To require the mortgagor to execute a deed is therefore unnecessary, and only as this Court said, "in further assurance."

One further consideration is decisive of the question as far as the present case is concerned. The decree of foreclosure now in question, as is usual, provided that the equity of redemption should be thereby foreclosed as against the mortgagor and all persons claiming under it since the date of the trust deed (Record, vol. 2, p. 280). This decree the Court could certainly make as against the defendants personally; and one taking title under the sale ordered and made pursuant to the decree can certainly invoke the enforcement by the Court of this part of the decree as a protection.

The Circuit Court for the Northern District of Georgia, according to *Muller* v. *Dows*, unquestionably had jurisdiction to foreclose the mortgage; on any theory of that case it could have made a decree that would have carried a clear title to property in Alabama as well as to property in Georgia, for it could have ordered conveyances by all the respondents. Assuming that the title conveyed by the master is imperfect without such confirmatory deeds, yet as the Court has decreed the equity of redemption to be foreclosed it can, as against persons bound personally by

that decree, as are the respondents here, and should protect the purchaser from adverse claims under the equity of redemption.

IV.

A Circuit Court of the United States may entertain as ancillary to a suit in which it has rendered a final decree, a bill brought to restrain proceedings in another Court by persons bound by its decree to impeach on grounds already or that might have been adjudicated a title based upon that decree.

Any suit that is brought in order to protect or give effect to a judgment or decree already rendered by the same court in a suit between the same parties or their juries, or which grows out of such former suit is, an ancillary proceeding.

Dunn v. *Clarke*, 8 Peters, 1.
Johnson v. *Christian*, 125 U. S. 642.
Minnesota Co. v. *St. Paul Co.*, 2 Wall. 609.
Carey v. *Houston & T. C. Ry. Co.*, 161 U. S. 115.

A Circuit Court of the United States can take jurisdiction of such a proceeding by virtue of its jurisdiction over the original suit. *Pacific R. R. of Mo.* v. *Mo. Pac. Ry. Co.*, 111 U. S. 505.

> "The bill though an original bill in the chancery sense of the word, is a continuation of the former suit on the question of the jurisdiction of the Circuit Court." 111 U. S. 522.

Under these principles a Circuit Court of the United States can by appropriate proceedings enforce and protect its

judgments and decrees. Its jurisdiction having once attached to the original subject-matter, it may entertain such further proceedings as are proper to give full effect to that jurisdiction, and all such proceedings are deemed to be ancillary.

It is not necessary that the original suit should still be pending in the Circuit Court when an ancillary bill is filed, or that the plaintiff in the ancillary bill should have been a party to the original suit, if he claims in privity under such a party.

In *Root* v. *Woolworth*, 150 U. S. 401, the plaintiff filed his bill in the Circuit Court to restrain the defendant from asserting a title which many years before in a suit brought in the same court by the plaintiff's predecessor in estate against the defendant had been set up by the defendant and adjudged invalid. This Court held that the bill could be maintained, although both parties were citizens of Nebraska, and although it was brought to recover real estate of which the plaintiff was not in possession, because it was ancillary to the former suit of which the Circuit Court had jurisdiction. Mr. Justice Jackson, delivering the opinion of the court, said:

> "It is well settled that a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments which remain unreversed, when the subject-matter and the parties are the same in both proceedings." 150 U. S. 410, 411.

And again,

> "The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or

writs of assistance in order to avoid the relitigation of questions once settled between the same parties, is well settled." 150 U. S. 411, 412.

On the right of one not a party to the original suit to maintain such a proceeding, the Court said:

"Under this principle Morton could undoubtedly have brought the bill to carry into effect the decree rendered in his favor against Root, and it is equally clear that his assignee, or privy in estate, has a right to the same relief that Morton could has asserted." 150 U. S. 411.

This jurisdiction extends as well to the acts of a person in bringing and maintaining a conflicting suit in another court as to acts *in pais*.

French v. *Hay*, 22 Wall. 250.

In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, a state court retained jurisdiction of an action of replevin removed to the Circuit Court of the United States, and upon final judgment for the defendant in the state court an action was brought by him against the plaintiff on the replevin bond. The plaintiff in replevin thereupon brought a bill in the Circuit Court to restrain the action on the replevin bond. This Court held that the bill could be maintained, and said:

"The bill in this case was, therefore, ancillary to the replevin suit, and was in substance a proceeding in the Federal Court to enforce its own judgment by preventing the defeated party from wresting the replevied property from the plaintiffs in replevin, who, by the judgment of the court, were entitled to it, or

> what was in effect the same thing, preventing them from enforcing a bond for the return of the property to them." 103 U. S. 497.

The proceedings set forth in the present petition are clearly within these authorities. The petitioner, while not a party to the original suit, claims title in privity with the plaintiff in that suit by purchase under a decree of the court. The original purchaser in the foreclosure sale could have become a party upon application in order to protect his interests.

Blossom v. *Milwaukee & C. R. R. Co.*, 1 Wall. 655.
Kneeland v. *American L. & T. Co.*, 136 U. S. 89.

The petitioner to whom the title under the decree has passed, can, as assignee, ask like protection of the court. The basis of the suit brought by the petitioner was that the defendants in the original suit, under the decree in which the plaintiff claimed title, had taken proceedings in another court to contest the validity of the decree rendered against them in the Circuit Court. In this particular the case was precisely like *Root* v. *Woolworth*, 150 U. S. 401, except that there the defendant had taken actual possession of the property in dispute instead of bringing a suit in another court.

The present petitioner would have been entitled as in *Root* v. *Woolworth*, 150 U. S. 401, to bring an ancillary bill even if this original suit had been terminated. In fact, it may be observed, the original suit was still pending, for the defendants, the present respondents, had claimed an appeal to this court which was not disposed of until February 24, 1902. See *Huguley Manufacturing Co.* v. *Galeton Cotton*

Mills, 184 U. S. 290. This was more than seven months after the ancillary bill was filled, and Judge Newman in granting a preliminary injunction expressly referred to the pending of the appeal as one ground for taking jurisdiction. See *Riverdale Cotton Mills* v. *Alabama & Georgia Manufacturing Co.*, 111 Fed. Rep. 431.

V.

The statutes of the United States do not prevent a Circuit Court in an ancillary proceeding from granting an injunction to restrain proceedings in a State Court to defeat a decree of the Circuit Court.

Section 720 of the Revised Statutes, reënacting the Act of March 2, 1793, provides that:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This act has always been construed as not applicable to cases in which a court of the United States has first acquired jurisdiction, and the injunction is asked for to enable it fully to exercise such jurisdiction. Whenever therefore an injunction is asked for by a bill which is ancillary to a suit or controversy of which the federal court first acquired jurisdiction, the issue of the injunction is not within the prohibition of this provision of the Revised Statutes.

In *French* v. *Hay*, 22 Wall. 250, a suit was brought in a

state court of Virginia and a decree rendered for the plaintiff. The defendant in that suit then removed the case to the Circuit Court of the United States. Before the removal was actually effected, the plaintiff obtained a transcript of the decree and brought an action on it in Pennsylvania. After the removal the defendant in the Pennsylvania suit filed a bill in the Circuit Court to which he had removed the original suit asking an injunction against the further prosecution of the action in Pennsylvania. A preliminary injunction was granted which, upon the Circuit Court entering a final decree in the suit first brought, was made permanent.

Mr. Justice Swayne, delivering the opinion of this Court, said:

> "The prohibition in the Judiciary Act against the granting of injunctions by the courts of the United States touching proceedings in state courts has no application here. The prior jurisdiction of the court below took the case out of the operation of that provision." 22 Wall. 253.

In *Dietzsch* v. *Huidekoper*, 103 U. S. 494, already referred to, the Circuit Court in like manner granted an injunction against further proceedings in a state court which were inconsistent with the exercise by the Circuit Court of a jurisdiction already acquired. Disposing of the objection that the statute forbade the issue of an injunction, this Court said:

> "A court of the United States is not prevented from enforcing its own judgments by the statute which forbids it to grant a writ of injunction to stay proceedings in a state court. Dietzsch, the original plaintiff

in the action on the replevin bond, represented the real parties in interest, and he was a party to the action of replevin, which had been pending, and was finally determined in the United States Circuit Court. That court had jurisdiction of his person, and could enforce its judgment in the replevin suit against him, or those whom he represented, their agents and attorneys. The bill in this case was filed for that purpose and that only."

And again:

"As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law, and the court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by a direct proceeding. These views are sustained by the case of *French, Trustee*, v. *Hay* (22 Wall. 250), between which and this case there is no substantial difference." 103 U. S. 497, 498.

The foregoing cases were approved in *Moran* v. *Sturges*, 154 U. S. 256, 269, *et seq.*

In *Bowdoin College* v. *Merritt*, 59 Fed. Rep. 6, a bill was brought in the Circuit Court to remove a cloud upon title. Pending the suit a person not properly a party, but deemed by the Court to have submitted to the jurisdiction, brought an action in a state court setting up a claim on substantially the same grounds as those asserted by the defendants in the Circuit Court. On application the plaintiff in the Circuit Court was allowed to file a supplemental bill making the plaintiff in the state court a defendant, and enjoin-

ing further proceedings in the state court. Mr. Justice McKenna, then the Circuit Judge, upheld the right to an injunction on the ground that the federal court had first acquired jurisdiction of the controversy.

See also *Sharon* v. *Terry*, 36 Fed. Rep. 337, 365, per Field, J.

Central Tr. Co. v. *Western N. C. R. R. Co.*, 89 Fed. Rep. 24.

State Tr. Co. v. *Kansas City P. & G. R. R. Co.*, 110 Fed. Rep. 10.

Central Tr. Co. v. *Western N. C. R. R. Co.*, 112 Fed. Rep. 471.

Stewart v. *Wisconsin Central Ry. Co.*, 117 Fed. Rep. 782.

The test by which the application of Section 720 of the Revised Statutes is to be determined is the same as the test of federal jurisdiction. If the proceeding in which an injunction is sought is in fact ancillary, so that the court is authorized to take jurisdiction for that reason alone, although there is not the requisite diversity of citizenship, then the provision of the Revised Statutes does not apply, because the injunction is incidental or ancillary to the exercise of its jurisdiction by the Circuit Court, and an injunction may be granted.

In the present case the bill seeking an injunction was filed to restrain a proceeding in the state court by which it was sought to annul the decree of the Circuit Court under which the foreclosure sale was had and under which the petitioner claimed title. The original foreclosure suit was still pending in the Circuit Court awaiting the decision of this Court upon an appeal. If the appeal was dismissed

leaving the final decree of the Circuit Court unreversed, as in fact happened, then the proceeding in the state court, if successful, would defeat and was solely intended to defeat the operation of that decree. A stronger case for an ancillary bill and for restraining proceedings in the state court to enable the Circuit Court to exercise its jurisdiction over a subject-matter to which that jurisdiction had long before attached cannot well be imagined.

VI.

The Circuit Court of Appeals erred in dismissing the bill for want of jurisdiction.

We have already shown that the original decree of foreclosure was binding upon the Alabama and Georgia Manufacturing Co. both as a corporation of Georgia and of Alabama, and was binding upon the Huguley Manufacturing Co., that the sale under the decree was valid as to all the land sold, that the bill filed by this petitioner was an ancillary bill and therefore properly within the jurisdiction of the Circuit Court regardless of any diversity of citizenship, and that the Circuit Court was not prevented by Section 720 of the Revised Statutes from granting the injunction prayed for. So far then as the subject-matter of the suit was concerned there was no want of jurisdiction in the Circuit Court.

It is equally true that there was no want of jurisdiction over the persons of the defendants.

In response to the order of notice the respondent corporations filed an "Answer to Bill and Response to Rule to

Show Cause," which reads, "Comes the Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co., each a corporation under the laws of Alabama, John M. Chilton, Welles, Bennett, & Welles, a partnership, and for answer to an order of this Court, . . . says." Nowhere in this answer is there any limitation upon the appearance for the respondents, and nowhere is there even an allegation of want of jurisdiction by any failure to serve process. The only suggestion of a want of personal jurisdiction is in the prayer that the Court "dismiss said bill for want of jurisdiction of the persons and subject-matter of said proceedings." This answer constituted a general appearance dispensing with the need of any service of process.

Fitzgerald Construction Co. v. *Fitzgerald*, 137 U. S. 98, 105, 106.

The case was one in which substituted service was proper, since it was an ancillary bill.

Pike v. *Gregory*, 94 Fed. Rep. 373.

Had not the respondents appeared generally, an order for such substituted service would no doubt have been made.

The Circuit Court of Appeals did not proceed on any want of service in the ancillary bill, but on the ground that the Circuit Court for the Northern District of Georgia had no jurisdiction to entertain the proceeding. This conclusion was apparently based upon the theory that the Alabama and Georgia Manufacturing Co., as a corporation of Alabama, and Huguley Manufacturing Co., because a corporation of Alabama and not of Georgia, were not

parties to the original foreclosure suit, were not bound by the decree in that suit, and could claim a source of title independent of that claimed by the corporations of the same name which were parties to that suit; and therefore that the petitioner's bill was not ancillary. But if, as we have sought to show, the Alabama and Georgia Manufacturing Co. was properly sued in the Northern District of Georgia as a corporation of Georgia, and the decree rendered against it was binding upon the corporation everywhere, under however many different States it might be chartered, and if the Huguley Manufacturing Co., by permitting itself to be sued as a corporation of Georgia, barred itself from afterwards impeaching the decree on the ground that it was a citizen of Alabama, then the whole foundation for the opinion of the majority of the Circuit Court of Appeals fails.

In conclusion we submit that the question of the status of a corporation organized under the laws of two or more States, but known and existing for all practical purposes of doing business only as a single body, and of the effect of a judgment or decree against such a corporation with reference to its binding force, is one of such serious importance and of such public interest as to warrant this Court in exercising its power to review by *certiorari* a decision of the Circuit Court of Appeals directly involving that question. We further submit that this Court should, in its discretion, grant the writ in order to review a decision the result of which will be to reopen a litigation that was begun thirteen years ago, in the course of which there have been three appeals, two unsuccessful, by the respondents to

the Circuit Court of Appeals, an unsuccessful application to this Court for a writ of *certiorari*, an unsuccessful appeal to this Court, and unsuccessful application to this Court, for a writ of prohibition. The effect of the present decree of the Circuit Court of Appeals is to destroy all the results of the litigation and to leave the present petitioner in a worse position than were his predecessors in interest at the outset. This result is reached only by permitting the respondents now to attack collaterally a jurisdiction to which throughout they have submitted without demur, and to raise now, for the first time, defences which should have been taken thirteen years ago.

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